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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Marisol Regalado,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-22-00211-PHX-MTL

ORDER

15 At issue is the Social Security Administration's denial of Plaintiff Marisol
16 Regalado's application for Social Security Disability Insurance Benefits. Regalado filed a
17 Complaint (Doc. 1) with this Court seeking judicial review of that denial. The Court has
18 reviewed the briefs and the Administrative Record (Doc. 16, "R."), and now affirms the
19 Administrative Law Judge's ("ALJ") decision.

20 **I. BACKGROUND**

21 Regalado applied for disability benefits under Title II of the Social Security Act on
22 October 17, 2018, based on an alleged disability beginning on March 19, 2018. (Doc. 16-
23 3 at 22; R. at 21.) The Social Security Commissioner denied Regalado's application and
24 subsequently denied reconsideration of her application. (R. at 66-82, 84-102.) On
25 December 2, 2020, Regalado appeared before an ALJ for a hearing on her claim. (*Id.* at 45-
26 63.) The ALJ denied her claims on January 19, 2021. (*Id.* at 21-36.) The ALJ's decision
27 became final after the Appeals Council denied Regalado's appeal. (*Id.* at 1-3.) She now
28 seeks judicial review of the Commissioner's decision under 42 U.S.C. § 405(g).

1 The Court has reviewed the medical evidence and will discuss the pertinent
 2 evidence in addressing the issues the parties raised. Upon considering the medical evidence
 3 and opinions, the ALJ evaluated Regalado's disability based on the following severe
 4 impairments: right and left knee impairments severe in combination; degenerative disc
 5 disease of the lumbar spine; bilateral wrist neuropathy; diabetes mellitus Type 2; major
 6 depressive disorder; post-traumatic stress disorder; panic disorder; mild cognitive
 7 impairment; and generalized anxiety disorder. (*Id.* at 24.)

8 The ALJ reviewed the medical evidence and testimony and ultimately concluded
 9 that Regalado was not disabled from the alleged disability onset date through the date the
 10 of ALJ's most recent decision. (*Id.* at 36.) The ALJ found that Regalado did not have any
 11 impairments or combination of impairments that meet or equal the severity of one of the
 12 listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1. (*Id.* at 25-27.) Next, the
 13 ALJ calculated Regalado's residual functional capacity ("RFC").¹ The ALJ found that:

14 After careful consideration of the entire record, the
 15 undersigned finds that the claimant has the residual functional
 16 capacity to perform light work as defined in 20 CFR
 17 404.1567(b) except for the following: The claimant can
 18 occasionally climb ladders, ropes, or scaffolds. The claimant
 19 can occasionally climb ramps or stairs. The claimant can
 20 frequently balance, stoop, kneel, crouch, or crawl. The
 21 claimant can occasionally reach overhead. The claimant should
 22 avoid concentrated exposure to extreme cold and excessive
 23 vibration (for example, that of a jackhammer) and to workplace
 hazards such as unprotected height and dangerous moving
 machinery (for example, factory-type machinery with an
 unshielded blade). The [claimant] can perform simple routine
 tasks and make simple work related decisions.

24 (*Id.* at 27.) Accordingly, the ALJ found that "[c]onsidering the claimant's age, education,
 25 work experience, and residual functional capacity, there are jobs that exist in significant
 26 numbers in the national economy that the claimant can perform." (*Id.* at 35.) These jobs
 27 include positions as a Small Product Assembler II, Routing Clerk, and Shipping and

28 ¹ Residual functional capacity refers to the most a claimant can still do in a work setting
 despite his or her limitations. 20 C.F.R. § 404.1545(a)(1).

1 Receiving Weigher. (*Id.*)

2 **II. LEGAL STANDARD**

3 In determining whether to reverse an ALJ's decision, the district court reviews only
 4 those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503,
 5 517 n.13 (9th Cir. 2001). The Court may set aside the Commissioner's determination only
 6 if it is not supported by substantial evidence or is based on legal error. *Orn v. Astrue*, 495
 7 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is relevant evidence that a reasonable
 8 person might accept as adequate to support a conclusion considering the record as a whole.
 9 *Id.* To determine whether substantial evidence supports a decision, the Court must consider
 10 the record as a whole and may not affirm simply by isolating a "specific quantum of
 11 supporting evidence." *Id.* Generally, "[w]here the evidence is susceptible to more than one
 12 rational interpretation, one of which supports the ALJ's decision, the ALJ's conclusion
 13 must be upheld." *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations
 14 omitted). The substantial evidence threshold "defers to the presiding ALJ, who has seen
 15 the hearing up close." *Biestek v. Berryhill*, — U.S. —, 139 S. Ct. 1148, 1157 (2019); *see*
 16 *also Thomas v. CalPortland*, 993 F.3d 1204, 1208 (9th Cir. 2021) (noting substantial
 17 evidence "is an extremely deferential standard").

18 To determine whether a claimant is disabled, the ALJ follows a five-step process.
 19 20 C.F.R. § 404.1520(a). The claimant bears the burden of proof on the first four steps, but
 20 the burden shifts to the Commissioner at step five. *Tackett v. Apfel*, 180 F.3d 1094, 1098
 21 (9th Cir. 1999). At the first step, the ALJ determines whether the claimant is presently
 22 engaging in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). If so, the claimant
 23 is not disabled, and the inquiry ends. *Id.* At step two, the ALJ determines whether the
 24 claimant has a "severe" medically determinable physical or mental impairment. 20 C.F.R.
 25 § 404.1520(a)(4)(ii). If not, the claimant is not disabled, and the inquiry ends. *Id.* At step
 26 three, the ALJ considers whether the claimant's impairment or combination of impairments
 27 meets or medically equals an impairment listed in Appendix 1 to Subpart P of 20 C.F.R.
 28 Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is automatically found to be

1 disabled. *Id.* At step four, the ALJ assesses the claimant's RFC and determines whether the
2 claimant is still capable of performing past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv).
3 If so, the claimant is not disabled, and the inquiry ends. *Id.* If not, the ALJ proceeds to the
4 fifth and final step, where the ALJ determines whether the claimant can perform any other
5 work in the national economy based on the claimant's RFC, age, education, and work
6 experience. 20 C.F.R. § 404.1520(a)(4)(v). If not, the claimant is disabled. *Id.*

7 **III. ANALYSIS**

8 The Court begins its analysis with whether remand is appropriate under 42 U.S.C.
9 § 405(g) and then evaluates the ALJ's treatment of symptom testimony and opinion
10 evidence.

11 **A. Remand for Additional Evidence**

12 Regalado requests that the Court remand her case because there are "multiple
13 treatment records that contain information relevant to the period at issue [that] were not
14 included in her disability claim file upon development and review at the initial,
15 reconsideration, or hearing levels of review." (Doc. 19 at 12.) The Court may order remand
16 of the case to consider additional evidence, "but only upon a showing that there is new
17 evidence which is material and that there is good cause for the failure to incorporate such
18 evidence into the record in a prior proceeding." 42 U.S.C. § 405(g). The new evidence
19 "must bear 'directly and substantially on the matter in dispute.'" *Mayes v. Massanari*, 276
20 F.3d 453, 462 (9th Cir. 2001) (quoting *Ward v. Schweiker*, 686 F.2d 762, 764 (9th Cir.
21 1982)). And a claimant must also establish that there is a "reasonable possibility" that the
22 new evidence would have changed the outcome of the administrative hearing. *Id.*

23 Regalado contends that the treatment record evidence is material because it relates
24 to the period the ALJ reviewed and contains details regarding the treatment of her
25 impairments that the ALJ determined were severe. (Doc. 19 at 13.) Regalado, however,
26 has not established how the new evidence would change the outcome of the ALJ's decision.
27 Aside from disclosing the mere existence of the records in her briefings, Regalado fails to
28 identify the contents of the records or connect the records to the present matter in any

1 meaningful way. Accordingly, the Court finds Regalado failed to establish that the
2 evidence is material.

3 Even if the Court were to treat the evidence as material, Regalado has failed to
4 establish good cause for failing to present the medical records before receiving an adverse
5 decision. To demonstrate good cause, “a claimant must show that the evidence was
6 unavailable earlier.” *Brittain v. Colvin*, No. 3:16-CV-05217-KLS, 2016 WL 4409230, at
7 *2 (W.D. Wash. Aug. 19, 2016) (citing *Mayes*, 276 F.3d at 463). Regalado contends that
8 her prior counsel and the ALJ failed to properly develop the record. (Doc. 19 at 8). But the
9 ALJ provided Regalado’s counsel with numerous opportunities to present new evidence
10 and further develop the record. (*See R.* at 48, 63.) And while she asserts that her prior
11 counsel failed to provide the new evidence in the administrative proceedings, Regalado has
12 not established that the records were unavailable at the time of the hearing. Thus, as
13 Regalado has failed to establish good cause, the Court will not remand for the consideration
14 of additional evidence.

15 **B. Symptom Testimony**

16 An ALJ engages in a two-step analysis when evaluating a claimant’s symptom
17 testimony. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). First, the ALJ must
18 determine whether the claimant has produced objective medical evidence of an underlying
19 impairment. *Id.* Second, unless there is evidence of malingering, the ALJ must provide
20 specific, clear, and convincing reasons for rejecting symptom testimony associated with
21 the underlying impairment. *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). This is
22 the most demanding standard in Social Security cases. *Moore v. Comm’r of Soc. Sec.*
23 *Admin.*, 278 F.3d 920, 924 (9th Cir. 2002). In making credibility determinations, an ALJ
24 may consider a variety of factors in evaluating symptom testimony including, “[the
25 claimant’s] reputation for truthfulness, inconsistencies either in [her] testimony or between
26 [her] testimony and [her] conduct, [her] daily activities, [her] work record, and testimony
27 from physicians and third parties concerning the nature, severity, and effect of the
28 symptoms of which [she] complains.” *Light v. Soc. Sec. Admin., Comm’r*, 119 F.3d 789,

1 792 (9th Cir. 1997).

2 Here, while the ALJ found no evidence of malingering and that Regalado's
3 "impairments could reasonably be expected to cause the alleged symptoms," she also found
4 that Regalado's "statements concerning the intensity, persistence and limiting effects of
5 these symptoms [were] not entirely consistent with the medical evidence and other
6 evidence in the record." (R. at 28.) Accordingly, the ALJ needed to provide specific, clear
7 and convincing reasons for discounting Regalado's symptom testimony.

8 The ALJ noted that Regalado's impairments include osteoarthritis, depression,
9 lumbar disc disease, and degenerative joint disease. (*Id.*) Regalado testified that "she
10 cannot work full time due to body aches, problems with executive functions, short term
11 memory and a lot of movement to decrease pain." (*Id.*) She also testified "that she has to
12 alternat[e] siting and standing due to arthritis. . . ." (*Id.* at 28, 55) Finally, Regalado stated
13 "that depression affects her ability to work . . . [and] that she has cognitive decline and has
14 to take medications." (*Id.* at 28.)

15 The ALJ's decision lists medical evidence that refutes the severity of Regalado's
16 symptom testimony. (*Id.* at 28-31.) As to body pains, the ALJ reasoned that although
17 Regalado was diagnosed with pain in her knees on December 18, 2018, a March 6, 2019
18 record displayed she had a normal range of motion. (*Id.* at 29.) Regarding Regalado's lower
19 back pain, lumbar disc degeneration, and arthritis, the ALJ noted that from November 2018
20 to August 2020 she received treatment for the pain which appeared to have provided
21 significant relief and improvement. (*Id.*) The ALJ also pointed to a medical record from
22 March 15, 2019 indicating that Regalado reported being "functionally independent as she
23 does housework, drives, and has hobbies including reading and walking." (*Id.* at 30.)
24 Regarding Regalado's mental impairments, the ALJ discussed medical records that show
25 Regalado had normal thought processes, good attention to detail, and good memory and
26 recall. (*Id.* at 30-31.) Similarly, the ALJ pointed to a June 2020 neuropsychological
27 evaluation finding that Regalado had intact cognitive functioning for her age and education.
28 (*Id.* at 31.)

1 Regalado contends that the ALJ failed to connect specific medical evidence to
2 inconsistencies in her symptom testimony. (Doc. 21 at 6.) But the ALJ highlighted the
3 inconsistencies prior to listing the specific objective medical evidence discussed above.
4 (See R. at 26.) For instance, when analyzing Regalado claims that her mental impairments
5 affected her ability to remember and understand, the ALJ compared her symptom
6 testimony with objective medical evidence that Regalado had good memory and recall and
7 ultimately concluded that the impairments would not limit her ability to complete light
8 work. (*Id.* at 26, 30.) The ALJ also considered Regalado's claims that her mental
9 impairments affect her ability to work with others but reasoned that she has never been
10 fired from a job based on her ability to work with others and that she regularly interacted
11 with others during her frequent shopping activities. (*Id.* at 26.) The ALJ found this
12 indicated that she could interact with others without significant issues. (*Id.*) The ALJ also
13 explained that the record demonstrated that Regalado's mental and physical impairments
14 did not prevent her from performing fine movements effectively (*Id.* at 25), completing
15 activities consistent with her RFC (*Id.* at 26), or managing and adapting herself to obtain
16 treatment for her impairments (*Id.* at 27).

17 The ALJ addressed each of Regalado's alleged impairments by examining objective
18 medical evidence relating to the individual impairments. See *Garrison*, 759 F.3d at 1018
19 (holding that an ALJ "must rely on examples to show why they do not believe that a
20 claimant is credible"). While the ALJ may not have articulated her reasoning in a section
21 directly after her listing of the objective medical evidence, it is apparent to the Court that
22 the listed evidence directly relates to the inconsistencies the ALJ found in Regalado's
23 symptom testimony. See *Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir. 1989) (finding
24 that it is appropriate for the Court to draw inferences from the ALJ's opinion). And
25 evidence that the ALJ discussed elsewhere in the decision consistently calls into question
26 the accuracy of Regalado's testimony. Thus, the Court finds that the ALJ based her
27 rejection of Regalado's symptom testimony on specific, clear and convincing reasons.
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1 C. Medical Opinion Evidence

2 In 2017, the Social Security Administration amended the regulations for evaluating
3 medical evidence. *See* Revisions to Rules Regarding Evaluation of Medical Evidence, 82
4 Fed. Reg. 5844, 5844 (Jan. 18, 2017). The new regulations apply to claims filed on or after
5 March 27, 2017. *Id.* Here, Regalado filed her application after the effective date. (Doc. 19
6 at 2.) The Ninth Circuit has addressed the effect of the new regulations, so the Court begins
7 with this issue. *See Woods v. Kijakazi*, 32 F.4th 785 (9th Cir. 2022).

8 Under the old regulations, “[t]he law in the Ninth Circuit [was] that, although the
9 ALJ must consider all medical opinion evidence, there is a hierarchy among the sources of
10 medical opinions. Those who have treated a claimant are treating physicians, those who
11 examined but did not treat the claimant are examining physicians, and those who neither
12 examined nor treated the claimant are nonexamining physicians.” *Latahotchee v. Comm’r*
13 *of Soc. Sec. Admin.*, No. CV-19-05668-PHX-DWL, 2021 WL 267909, *4 (D. Ariz. Jan.
14 27, 2021) (citation omitted). Based on this hierarchy, the Ninth Circuit consistently ruled
15 that an ALJ may only reject an examining physician’s opinion by providing “specific and
16 legitimate reasons that are supported by substantial evidence in the record.” *Lester v.*
17 *Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).

18 The 2017 regulations provide that “[ALJs] will not defer or give any specific
19 evidentiary weight, including controlling weight, to any medical opinion The most
20 important factors [an ALJ will] consider when [evaluating] the persuasiveness of medical
21 opinions . . . are supportability . . . and consistency.” 20 C.F.R. § 404.1520c(a). Other
22 factors, which an ALJ “may, but [is] not required to[] explain” when evaluating the
23 persuasiveness of a medical opinion, are the medical source’s “relationship with the
24 claimant,” “specialization,” “familiarity with the other evidence in the claim,” and
25 “understanding of our disability program’s policies and evidentiary requirements.” *Id.*
26 § 404.1520c(b)(2), (c).

27 In *Woods*, the Ninth Circuit held that these revised regulations clearly intended to
28 abrogate its precedent requiring ALJs to provide “specific and legitimate reasons” for

1 rejecting a treating or examining doctor's opinion. *See Woods*, 32 F.4th at 792.
2 Nonetheless, in so holding, the Ninth Circuit stressed that an ALJ "must 'articulate . . . how
3 persuasive' it finds 'all of the medical opinions' from each doctor or other source, and
4 'explain how it considered the supportability and consistency factors' in reaching these
5 findings." *Id.* (citing 20 C.F.R. §§ 404.1520c(b), 404.1520(b)(2)).

6 Regalado contends that the ALJ erred in finding the opinions from the non-
7 examining and examining state agency physician's persuasive. (Doc. 19 at 18.)² Regalado
8 first takes issue with the ALJ's treatment of the opinions of the two non-examining doctors,
9 Dr. Bargan and Dr. Naiman. (*Id.*) Despite Regalado's assertion that the ALJ gave weight
10 to Dr. Bargan's opinion, the ALJ found the opinion unpersuasive. (R. at 33.) The ALJ
11 found that while Dr. Bargan may have supported the opinion with a narrative, Dr. Bargan
12 did not consider all the impairment evidence in the record or give much weight to
13 inconsistent medical opinions. (*Id.*) The Court finds that the ALJ did not err in discounting
14 Dr. Bargan's opinion.

15 Regarding Dr. Naiman's opinion, the ALJ found this opinion was only partially
16 persuasive. (*Id.*) The ALJ noted that Dr. Naiman's assessment was supported by narratives
17 and consistent with the record overall but found that Regalado's shoulder and knee
18 impairments were more consistent with light work, rather than medium work. (*Id.* at 33-
19 34.) In other words, the ALJ found Regalado to be more impaired than Dr. Naiman opined.
20 Thus, if anything, the ALJ's treatment of Dr. Naiman's opinion increased the likelihood of
21 an award of benefits.

22 Regalado also takes issue with the ALJ's treatment of two examining doctors, Dr.
23 Littlefield and Dr. Cunningham. (Doc. 19 at 18.) Regalado argues that the ALJ erred in
24 relying on these opinions. (*Id.*) The ALJ found Dr. Littlefield's opinion mostly persuasive.
25 (R. at 32.) In weighing the opinion, the ALJ reasoned that it was supported by evidence in
26 the record and was consistent with the evidence available at the time Dr. Littlefield issued

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28 ² The Commissioner argues that the ALJ's treatment of Dr. Morgan's opinion was proper.
(Doc. 20 at 16.) The Court does not address this argument because Regalado does not rely
on Dr. Morgan's assessment. (Doc. 21 at 7 n.3.)

1 his report. But the ALJ notes that Dr. Littlefield did not have access to Dr. Knapp's later
2 report demonstrating that Regalado showed a mild cognitive impairment. (*Id.*)
3 Accordingly, the ALJ lessened the persuasiveness of Dr. Littlefield opinion. The Court
4 finds no error in the ALJ's evaluation of Dr. Littlefield's opinion. Regarding Dr.
5 Cunningham's opinion, the ALJ found it persuasive to a limited extent. (*Id.* at 33.) The
6 ALJ noted that Dr. Cunningham supported the opinion by conducting a physical
7 examination. (*Id.*) But the ALJ did not agree with Dr. Cunningham's opinion that Regalado
8 could engage in medium work. (*Id.*) Instead, the ALJ found Regalado impairments to be
9 greater than Dr. Cunningham opined. Again, the ALJ's reasoning as to Dr. Cunningham
10 increased the likelihood of a finding of disability. The Court finds no error in the ALJ's
11 treatment of Dr. Cunningham's opinion.

12 As remand is not appropriate here, the Court need not address the credit-as-true
13 analysis.

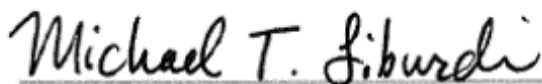
14 **IV. CONCLUSION**

15 Accordingly,

16 **IT IS ORDERED** affirming the January 19, 2021 decision of the Administrative
17 Law Judge (R. at 21), as upheld by the Appeals Council (R. at 1).

18 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter judgment
19 consistent with this Order and close this case.

20 Dated this 7th day of March, 2023.

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23 Michael T. Liburdi
24 United States District Judge
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